EVIDENCE — CHARACTER — PROOF OF REPUTATION OF DISORDERLY HOUSES. — In a prosecution for keeping a disorderly house, the state introduced evidence of the reputation of the house in the community. *Held*, that such evidence is admissible. *Wilson* v. *State*, 136 S. W. 447 (Tex., Ct. Cr. App.).

Much confusion exists in the cases as to what the real issue in these prosecutions is, *i. e.*, whether the fact to be proved is fame or reputation, or actual habit or character. *Martin* v. *State*, 56 So. 64 (Ala., App. Ct.). See 2 WIGMORE, EVIDENCE, § 1620. If reputation is part of the crime, then certainly evidence of reputation is admissible. *State* v. *Thomas*, 47 Conn. 546; *Carroll* v. *State*, 111 Pac. 1021 (Okl., Ct. Cr. App.). See 1 WIGMORE, EVIDENCE, § 78. But where actual habit or character is in issue, the authorities divide. Evidence of reputation then becomes mere hearsay. However, in a majority of jurisdictions, such evidence is admitted. *In re Fong Yuk*, 8 Brit. Col. 118; *Drake* v. *State*, 14 Neb. 535. In a very respectable minority of states the evidence is logically excluded as hearsay not falling within the recognized exceptions to the hearsay rule. *State* v. *Boardman*, 64 Me. 523; *Henson* v. *State*, 62 Md. 231. In many of these states, such evidence is now made admissible by special legislation relating to bawdy houses. CODE OF IA., 1897, § 4944; WIS. STATS., 1898, § 4581*g*; MD. PUB. GEN. LAWS, 1904, Art. XXVII, § 18. These statutes have been held constitutional. *State* v. *Haberle*, 72 Ia. 138. The Pennsylvania courts, while not admitting reputation to prove the character of houses generally, make an exception in case of bawdy houses. *Commonwealth* v. *Soo Hoo Doo*, 41 Pa. Super. Ct. 249. The reason for this, namely, the difficulty of getting witnesses to testify to facts within their own knowledge in cases of this nature, is well stated in an earlier Pennsylvania case. See *Commonwealth* v. *Murr*, 7 Pa. Super. Ct. 391, 393. The same argument is advanced by text writers for such an exception to the hearsay rule. See 2 WIGMORE, EVIDENCE, § 1620.

EVIDENCE — RES GESTAE — TRAIN-DISPATCHER'S SHEET. — On the issue of the negligent speed of the defendant's train by which the plaintiff was injured between T. and J., after notice and failure to produce the train-dispatcher's sheet, the plaintiff was allowed to prove the running time of the train between T. and J. on the day of the accident, as it appeared on the sheet, by the testimony of a witness who had seen it within a week in the defendant's office in B. Defendant's employees testified to the existence and nature of such a sheet. Neither the telegraph operators at T. and J. who reported the data, nor the dispatcher at B. who made the entries, were produced or accounted for. *Held*, that the evidence is admissible, against the defendant, "as part of the *res gestæ* of the passing of the train by the stations." *St. Louis & Santa Fé R. Co.* v. *Sutton*, 55 So. 989 (Ala.).

Declarations of an agent are admissible against his principal, if made within the scope of his authority. *United States* v. *Gooding*, 12 Wheat. 460. The frequent misinterpretation of this rule in the phraseology of *res gestæ*, appropriate only to a distinct criterion of admissibility, has caused an unfortunate confusion strikingly illustrated by the principal case. *Cf. Texas, etc. Ry. Co.* v. *Lester*, 75 Tex. 56. The sheet seen by this witness was circumstantially identified with the one shown to be kept by the defendant's agents. Its admissibility against the defendant, therefore, should rest upon its being an admission. *Lemen* v. *Kansas City Southern Ry. Co.*, 132 S. W. 13 (Mo.). Apart from this, it could be used by the dispatcher to refresh recollection, if the original observers also testified. *The Mayor, etc. of New York* v. *Second Ave. R. Co.*, 102 N. Y. 572; *Chicago Lumbering Co.* v. *Hewitt*, 64 Fed. 314. Authorities cited by the principal case have indeed held that the mechanical medium of such reports and their life-and-death importance rendered the operator's testi-

mony unnecessary. *Donovan* v. *Boston & Maine R. Co.*, 158 Mass. 450; *Louisville & Nashville R. Co.* v. *Daniel*, 122 Ky. 256; *Firemen's Ins. Co.* v. *Seaboard, etc. Ry. Co.*, 138 N. C. 42. Copying weights from scale-tickets, since destroyed, has also been held sufficiently mechanical to dispense with the weigher's testimony. *Drumm-Flato Commission Co.* v. *Gerlach Bank*, 107 Mo. App. 426. Mere inferences from an established course of business have been relied on, out of mercantile necessity. *Fielder Bros.* v. *Collier*, 13 Ga. 496; *Continental Bank* v. *First Nat. Bank*, 108 Tenn. 374. But, whether or not such cases already encroach too far upon the hearsay rule, apparently none would justify admitting a dispatcher's sheet without his testimony, except where it constitutes an admission.

INSURANCE — GUARANTY INSURANCE — NATURE OF CONTRACT: RELATION TO CONTRACT OF SURETYSHIP. — The defendant company issued a contractor's bond guaranteeing the payment of all subcontractors. Certain subcontractors, to whose use the present action is brought, repeatedly extended the time of payment by agreement with the principal contractor. *Held*, that the defendant company is still liable on the bond for the principal contractor's obligations. *City of Philadelphia, to Use of Thompson* v. *Fidelity & Deposit Co. of Md.*, 80 Atl. 62 (Pa.).

For a discussion of the principles involved, see 24 HARV. L. REV. 568.

INTERSTATE COMMERCE — CONTROL BY STATES — PROHIBITION OF EXPORTATION OF NATURAL GAS. — An Oklahoma statute practically prohibited the transportation of natural gas, by means of pipe lines, out of the state, although domestic commerce was allowed. *Held*, that the statute is unconstitutional. *West* v. *Kansas Natural Gas Co.*, 31 Sup. Ct. 564; *Haskell* v. *Cowham*, 187 Fed. 403 (C. C. A., Eighth Circ.).

A state has no power to interfere directly with interstate commerce. *Pullman Co.* v. *Kansas ex rel. Coleman*, 216 U. S. 56. The absolute power of the State over its highways urged in support of the present statute, as a means of prohibiting the exportation of gas, must give way to the exclusive jurisdiction of Congress. That Congress has not legislated does not authorize the state to do so, for the original right to engage in interstate commerce, under the Constitution, can be regulated by Congress only. State laws prohibiting interstate commerce in game, however, have been sustained. *Geer* v. *Connecticut*, 161 U. S. 519; *New York ex rel. Silz* v. *Hesterberg*, 211 U. S. 31. A state statute prohibiting the taking of water from fresh-water streams to another state was held valid. *Hudson County Water Co.* v. *McCarter*, 209 U. S. 349. The right of the state to preserve its natural resources to itself would seem to be as great in the principal case. The interference with interstate commerce seems no more direct. But the nature of the state's property right in wild animals, and in streams, as compared with the complete private property right of the owner of natural gas reduced to possession differentiates the cases. See 25 HARV. L. REV. 76. The principal case seems clearly right. *State ex rel. Corwin* v. *Indiana & Ohio Oil, etc. Co.*, 120 Ind. 575.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — DAMAGE TO PERSON AND PROPERTY CAUSED BY ONE NEGLIGENT ACT. — The plaintiff, while riding in his wagon, was struck by the defendant's trolley car and injured personally. His horse and wagon were also damaged, for which he recovered judgment. *Held*, that this does not bar an action for the personal injuries. *Ochs* v. *Public Service Ry. Co.*, 80 Atl. 495 (N. J., Ct. Err. and App.).

This case reverses the decision of the lower court, criticised in 24 HARV. L. REV. 492.

LANDLORD AND TENANT — REPAIR OF PREMISES — TORT LIABILITY OF LANDLORD. — The defendant leased premises to a tenant for purposes of public